***United States Court of Appeals***

***for the***

***District of Columbia Circuit***


# TRANSCRIPT OF RECORD

# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

## OCTOBER TERM, 1904.

## No. 1481.

JOSIAH MILLARD, APPELLANT,

*vs.*

ELLIS H. ROBERTS, TREASURER OF THE UNITED STATES; HENRY B. F. MACFARLAND, HENRY L. WEST, AND JOHN BIDDLE, COMMISSIONERS OF THE DISTRICT OF COLUMBIA; THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, AND THE WASHINGTON TERMINAL COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.



JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 19, 1904.

# In the Court of Appeals of the District of Columbia.

---

JOSIAH MILLARD, Appellant,
*vs.*
ELLIS H. ROBERTS, Treasurer of the United States, ET AL. } No. 1481.

---

*a* Supreme Court of the District of Columbia.

JOSIAH MILLARD, Complainant,
*vs.*
ELLIS H. ROBERTS, Treasurer of the United States; Henry B. F. Macfarland, Henry L. West, and John Biddle, Commissioners of the District of Columbia; The Philadelphia, Baltimore and Washington Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Baltimore and Potomac Railroad Company, The Baltimore and Ohio Railroad Company, and The Washington Terminal Company, Defendants. } No. 24131. Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Original Bill.*

Filed August 12, 1903.

In the Supreme Court of the District of Columbia, the 12th Day of August, 1903.

| | |
|---|---|
| JOSIAH MILLARD, Plaintiff, *against* ELLIS H ROBERTS, Treasurer of the United States; Henry B. F. Macfarland, Henry L. West, and John Biddle, Commissioners of the District of Columbia; The Philadelphia, Baltimore and Washington Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Baltimore and Potomac Railroad Company, The Baltimore and Ohio Railroad Company, and The Washington Terminal Company, Defendants. | In Equity. No. 24131, Docket No. 54. |

To the supreme court of the District of Columbia, holding an equity court:

The plaintiff states as follows:

1. That he is a citizen and taxpayer of the United States and of the District of Columbia, is of full age, and brings this suit in his own right, and in the interest of himself and all persons similarly situated.

2. That the defendant, Ellis H. Roberts, is a resident of the District of Columbia, and is sued as Treasurer of the United States, duly appointed under the provisions of an act of Congress entitled "An act to establish the Treasury Department," approved September 2, 1789 (1 Stat., 65) and the acts in addition thereto.

2 3. That the defendants, Henry B. F. Macfarland, Henry L. West, and John Biddle, are residents of the District of Columbia, and are sued as the Commissioners of said District, duly appointed under an act of Congress entitled "An act providing a permanent form of government for the District of Columbia," approved June 11, 1878 (20 Stat., 102).

4. That the defendants, Macfarland, West and Biddle, are charged, in their official capacities, with the performance of certain acts, or duties, by the provisions of an act of Congress entitled "An act to provide for a union railroad station in the District of Columbia, and for other purposes," approved February 28, 1903; and that the Treasurer of the United States is also particularly charged by the act of Congress entitled "An act providing a permanent form of gov-

ernment for the District of Columbia, approved June 11, 1878, with the safe keeping and disbursement of the public moneys of the said District.

5. That the defendants, The Philadelphia, Baltimore and Washington Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Baltimore and Potomac Railroad Company, The Baltimore and Ohio Railroad Company, and The Washington Terminal Company, are private corporations, severally recognized in the said act of Congress, and all interested in the railway and terminal facilities of the District of Columbia and the subject-matter of this suit.

6. That the District of Columbia owns no stock in any of the defendant companies; nor is otherwise interested in any of them, save as useful private enterprises; yet that by the terms
3 of the said act, in section eight of the same, construed in connection with section nine of an act relating to the Baltimore and Potomac Railroad Company, approved February 12, 1901, which is continued in force except as modified thereby, the said District is required without any lawful consideration therefor, to pay to the defendant, The Philadelphia, Baltimore and Washington Railroad Company, the sum of seven hundred and fifty thousand dollars, "to be levied and assessed upon the taxable property and privileges in the said District other than the property of the United States and the District of Columbia," for the exclusive use of said corporation, which is a private use, and not a public governmental use.

And moreover, that by the terms of the said act of February 28, 1903, contained also in section eight thereof, construed in connection with section eight of an act relating to the Baltimore and Ohio Railroad Company, approved February 12, 1901, which is continued in force except as modified thereby, the said District is likewise required, without any just or lawful consideration therefor, to pay to the defendant, The Baltimore and Ohio Railroad Company, the sum of seven hundred and fifty thousand dollars "out of the revenues of the District of Columbia," for the exclusive use of the said defendant, which is a private use, and not a public governmental use.

7. That the public moneys of the District of Columbia are raised chiefly by direct taxation on the lands therein and that the complainant is obliged to pay, and does pay, direct taxes on lands owned by him therein.

4 8. That the principle of apportionment established in the Constitution secures the said District from any oppressive exercise by Congress of the power to lay and collect direct taxes therein for any but the public governmental purposes of the said District.

9. That neither the Government of the United States nor that of the District of Columbia is authorized by the Constitution to take private property by taxation for any but a public governmental use; or to take it at all without due process of law; or to take such

property upon the pretext of a public use, and afterwards devote it to private uses, as is done by the acts of Congress above mentioned.

10. That the uses to which the revenues of the said District are directed by the said acts to be applied, being private, and not public governmental, uses, they constitute a gross misappropriation and squandering of public funds, in which the complainant has an interest which this court is bound to protect.

11. That if the defendant, The Treasurer of the United States, who, in pursuance of the act of June 11, 1878, aforesaid, has the custody of the funds of the said District, should pay the sums of money appropriated aforesaid, the assets of the said District would be excessively diminished thereby; so that new and exorbitant taxes would be required to meet the legitimate expenses of the District government, and the complainant would in consequence thereof be grievously oppressed.

5 12. That for the reasons above stated the said act of Congress, approved February 28, 1903, and the provisions of the two acts approved February 12, 1901, which are adopted and continued in force thereby, are repugnant to the Constitution of the United States, in that they violate those provisions thereof which declare that "no capitation or other direct tax shall be laid unless in proportion to the census or enumeration" therein directed to be taken; and that "no person shall be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation."

13. That the complainant is without any adequate remedy at law in the premises; and that he and all other citizens of the said District upon whom direct taxes are laid in violation of the said constitutional safeguards, will suffer irreparable damage and injury by reason of the execution of the acts of Congress mentioned in the preceding section, if the same are allowed to be carried into full effect by the defendants, contrary to the letter and spirit of the Constitution of the United States.

14. That the plaintiff is informed and believes that the defendants, each and all of them, will immediately proceed to carry said acts into execution, unless they are prohibited from so doing, by the order and decree of this court.

*Prayers.*

Wherefore the plaintiff prays:

1. That the United States writ of subpœna may issue from this court directed to each of the defendants above named, com-

6 manding them severally to appear before this court on a day therein named and answer the exigencies of this bill.

2. That the defendant, Ellis H. Roberts, as Treasurer of the United States, and *ex-officio* treasurer of the District of Columbia, be enjoined and strictly forbidden by this court and the authority thereof

from paying over to any person or persons whatsoever, at any time, any moneys of the District of Columbia, by virtue of, or under, any claim that may be made for such payment, in pursuance of any of the acts of Congress mentioned and described in section six of this bill; any warrants drawn by the Secretary of the Treasury purporting to authorize such payments to the contrary notwithstanding; and that all the other defendants above named be likewise enjoined and strictly forbidden from carrying into effect, or in any manner attempting to carry into effect, the provisions of the acts of Congress above complained of, or any part of the same; and that the said acts of Congress be declared null and void, for want of constitutional authority.

3. That the plaintiff may have such other and further relief in the premises as the nature of the same may require.

The defendants in this case are: Ellis H. Roberts, Treasurer of the United States; Henry B. F. Macfarland, Henry L. West, and John Biddle, Commissioners of the District of Columbia; The
7 Philadelphia, Baltimore and Washington Railroad Company; The Philadelphia, Wilmington and Baltimore Railroad Company; The Baltimore and Potomac Railroad Company; The Baltimore and Ohio Railroad Company; and The Washington Terminal Company.

JOSIAH MILLARD.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the foregoing bill in equity by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

JOSIAH MILLARD.

Subscribed and sworn to before me, clerk of the supreme court of the District of Columbia, this 12th day of August, 1903.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clerk.*

8 *Demurrer.*

Filed October 5, 1903.

In the Supreme Court of the District of Columbia.

JOSIAH MILLARD, Plaintiff,
*vs.*
ELLIS H. ROBERTS, Treasurer of the United States; Henry B. F. Macfarland, Henry L. West, and John Biddle, Commissioners of the District of Columbia, *et al.*, Defendants.

In Equity. No. 24131, Docket 54.

The defendants, Henry B. F. Macfarland, Henry L. West and John Biddle, Commissioners of the District of Columbia, say that the complainant has not stated in his bill of complaint filed herein such a case as entitles him to the relief therein prayed or to any other relief against these defendants. Wherefore, these defendants demand the judgment of the court whether they shall make further answer to said bill of complaint and pray to be hence dismissed with their costs.

HENRY B. F. MACFARLAND,
HENRY L. WEST,
JOHN BIDDLE,
*Commissioners, D. C.*

DISTRICT OF COLUMBIA, *ss:*

Personally appears Henry B. F. Macfarland, who being duly sworn says: That he is the president of the Board of Commissioners of the District of Columbia; that he has read the foregoing demurrer and that the same is not interposed for delay.

HENRY B. F. MACFARLAND.

9 Subscribed and sworn to before me this fifth day of October, A. D. 1903.

WILLIAM TINDALL,
*Notary Public, D. C.*

[SEAL.]

I hereby certify that the foregoing demurrer is well founded in law, in my opinion.

A. B. DUVALL,
*Attorney for Commissioners.*

*Demurrer.*

Filed October 6, 1903.

In the Supreme Court of the District of Columbia.

JOSIAH MILLARD, Plaintiff,
*vs.*
ELLIS H. ROBERTS, Treasurer of the United States, *et al.*, Defendants.
} In Equity. No. 24131.

The defendant, The Washington Terminal Company, by protestation, not admitting to be true any of the matters or things in said bill of complaint contained, doth demur thereto, and for cause of demurrer says that the complainant has not in and by said bill stated any cause of which this court can take cognizance.

And the defendant prays judgment whether it should be required to make any further or other answer to said bill of complaint.

GEORGE E. HAMILTON,
*Solicitor for Defendant,*
*The Washington Terminal Company.*

10 I, George E. Hamilton, counsel for the defendant, The Washington Terminal Company, do hereby certify that in my opinion the foregoing demurrer is well founded in law.

GEORGE E. HAMILTON,
*Sol'r for the Washington Terminal Co.*

DISTRICT OF COLUMBIA, *To wit:*

I, Hugh L. Bond, Jr., being duly sworn, do make oath that the foregoing demurrer is not interposed for the purposes of delay.

HUGH L. BOND, JR.,
*Vice President of the Washington Terminal Company.*

Subscribed and sworn to before me this 5th day of October, A. D. 1903. Witness my hand — notarial seal.

GEO. W. HAULENBEEK,
*Notary Public.*

[SEAL.]

*Demurrer of Ellis H. Roberts.*

Filed October 6, 1903.

In the Supreme Court of the District of Columbia.

JOSIAH MILLARD
*vs.*
ELLIS H. ROBERTS, Treasurer of the United States, *et al.* } In Equity. No. 24131.

Separate demurrer of the defendant Ellis H. Roberts, Treasurer of the United States, to the bill of complaint.

11 Now comes the defendant Ellis H. Roberts, Treasurer of the United States, and, by protestation, not confessing or acknowledging all or any of the matters and things in the bill of complaint to be true in such manner and form as the same are therein set forth and alleged, doth demur to said bill of complaint, and for cause of demurrer says that the said bill contains no matter of equity whereon this court can ground any decree, or give complainant any relief as against this defendant. Wherefore this defendant prays the judgment of this honorable court whether he shall be compelled to make any other answer to said bill of complaint. And he prays to be hence dismissed, with his costs, etc.

MORGAN H. BEACH,
*Solicitor for Defendant Ellis H. Roberts,*
*Treasurer of United States.*

I hereby certify, as solicitor for the defendant Ellis H. Roberts, in the foregoing demurrer, that in my opinion the same is well founded in point of law and proper to be filed.

MORGAN H. BEACH.

The defendant Ellis H. Roberts, Treasurer of the United States, makes oath that the foregoing demurrer is not interposed for delay.

ELLIS H. ROBERTS.

Subscribed and sworn to before me, this sixth day of October, A. D. 1903.

HIRAM W. BARRETT,
[SEAL.] *Notary Public for the District of Columbia.*

12 *Suggestion of Harry Willian.*

Filed October 6, 1903.

In the Supreme Court of the District of Columbia.

JOSIAH MILLARD, Complainant,
*vs.*
ELLIS H. ROBERTS, Treasurer, &c., ET AL. } In Equity. No. 24131.

Suggestion of Harry Willian, served with summons as acting general agent of the Philadelphia, Wilmington and Baltimore Railroad Company.

Now comes Harry Willian, by his attorney appearing specially for this purpose, and states to the court that neither at the date of bringing the above suit, nor since, was there or has there been in existence any such corporation as the Philadelphia, Wilmington and Baltimore Railroad Company, nor was he at the date of service of said summons acting general agent of said company, or connected with it in any other capacity whatsoever.

By way of further suggestion said Harry Willian says that the corporations theretofore known as the Philadelphia, Wilmington and Baltimore Railroad Company and the Baltimore and Potomac Railroad Company were on the 1st. day of November, A. D. 1902 merged and consolidated into the corporation known as and called the Philadelphia, Baltimore and Washington Railroad Company, and since said 1st. day of November, A. D. 1902 said Philadelphia,
13 Wilmington and Baltimore Railroad Company has been dissolved and without corporate existence for any purpose whatever.

HARRY WILLIAN.

F. D. McKENNEY,
J. S. FLANNERY,
*Sol'rs for Harry Willian.*

DISTRICT OF COLUMBIA, *ss:*

I, Harry Willian, being first duly sworn, depose and say that I am the same person whose name is subscribed to the foregoing suggestion or statement; that I have read and know the contents of said suggestion or statement and the facts therein set forth are true. Prior to November 1, 1902, I was chief clerk in the office of Joseph Crawford, general agent of the Philadelphia, Wilmington and Baltimore Railroad Company, and since said date, I have been chief clerk in the office of Joseph Crawford, general agent of the Phila-

delphia, Baltimore and Washington Railroad Company, and my knowledge of the facts set forth in said plea, except such as are based upon my personal knowledge has been gained in the course of transacting the business of said offices.

HARRY WILLIAN.

Subscribed and sworn to before me this sixth day of October, A. D. 1903.

ERNEST G. THOMPSON,
*Notary Public, D. C.*

[SEAL.]

14 *Demurrer of Balto. & Ohio R. R. Co.*

Filed October 6, 1903.

In the Supreme Court of the District of Columbia.

JOSIAH MILLARD, Plaintiff,
*vs.*
ELLIS H. ROBERTS, Treasurer of the United States, *et al.*, Defendants. } Equity. No. 24131.

The defendant, The Baltimore and Ohio Railroad Company, by protestation, not admitting to be true any of the matters or things in said bill of complaint contained, doth demur thereto, and for cause of demurrer says that the complainant has not in and by said bill stated any cause of which this court can take cognizance.

And the defendant prays judgment whether it should be required to make any further or other answer to said bill of complaint.

GEO. E. HAMILTON,
*Solicitor for Defendant The Baltimore and Ohio Railroad Company.*

I, George E. Hamilton, counsel for the defendant, The Baltimore and Ohio Railroad Company, do hereby certify that in my opinion the foregoing demurrer is well founded in law.

STATE OF MARYLAND, *City of Baltimore,* } *To wit:*

I, Hugh L Bond, Jr., being duly sworn, do make oath that the foregoing demurrer is not interposed for the purposes of delay.

HUGH L. BOND, JR.,
*3rd Vice President and General Attorney of the Baltimore and Ohio Railroad Company.*

15 Subscribed and sworn to before me this fifth day of October, A. D. 1903.

Witness my hand and notarial seal.

GEO. W. HAULENBEEK,
*Notary Public.*

[SEAL.]

16 *Amended Bill for Injunction.*

Filed November 20, 1903.

In the Supreme Court of the District of Columbia.

| | |
|---|---|
| JOSIAH MILLARD, Complainant, *vs.* ELLIS H. ROBERTS, Treasurer of the United States; Henry B. F. Macfarland, Henry L. West, and John Biddle, Commissioners of the District of Columbia; The Philadelphia, Baltimore and Washington Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Baltimore and Potomac Railroad Company, The Baltimore and Ohio Railroad Company, and The Washington Terminal Company, Defendants. | In Equity. No. 24141, Docket 54. |

To the supreme court of the District of Columbia, holding an equity court:

The complainant Josiah Millard having first obtained leave of court, files this his amended bill of complaint and states as follows:

1. That he is a citizen and taxpayer of the United States and of the District of Columbia, is of full age, and brings this suit in his own right, and in the interest of himself and all persons similarly situated.

2. The *the* defendant, Ellis H. Roberts, is a resident of the District of Columbia, and is sued as Treasurer of the United States, duly appointed under the provisions of an act of Congress entitled "An act to establish the Treasury Department," approved September 2, 1789 (1 Stat., 65) and the acts in addition thereto.

17 3. That the defendants, Henry B. F. Macfarland, Henry L. West, and John Biddle, are residents of the District of Columbia, and are sued as the Commissioners of said District, duly appointed under an act of Congress entitled "An act providing a permanent form of government for the District of Columbia," approved June 11, 1878 (20 Stat., 102).

4. That the defendants, Macfarland, West and Biddle, are charged, in their official capacities, with the performance of certain acts, or duties, by the provisions of an act of Congress entitled "An act to provide for a union railroad station in the District of Columbia, and for other purposes," approved February 28, 1903; and that the Treasurer of the United States is also particularly charged by the act

of Congress entitled "An act providing a permanent form of government for the District of Columbia, approved June 11, 1878, with the safe keeping and disbursement of the public moneys of the said District.

5. That the defendants, The Philadelphia, Baltimore and Washington Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Baltimore and Potomac Railroad Company, The Baltimore and Ohio Railroad Company, and The Washington Terminal Company, are private corporations, severally recognized in the said act of Congress, and all interested in the railway and terminal facilities of the District of Columbia and the subject-matter of this suit.

6. That the District of Columbia owns no stock in any of
18 the defendant companies; nor is otherwise interested in any of them, save as useful private enterprises; yet that by the terms of the said act, in section eight of the same, construed in connection with section nine of an act relating to the Baltimore and Potomac Railroad Company, approved February 12, 1901, which is continued in force except as modified thereby, the said District is required without any lawful consideration therefor, to pay to the defendant, The Philadelphia, Baltimore and Washington Railroad Company, the sum of seven hundred and fifty thousand dollars, "to be levied and assessed upon the taxable property and privileges in the said District other than the property of the United States and the District of Columbia," for the exclusive use of said corporation, which is a private use, and not a public governmental use.

And, moreover, that by the terms of the said act of February 28, 1903, contained also in section eight thereof, construed in connection with section eight of an act relating to the Baltimore and Ohio Railroad Company, approved February 12, 1901, which is continued in force except as modified thereby, the said District is likewise required, without any just or lawful consideration therefor, to pay to the defendant, The Baltimore and Ohio Railroad Company, the sum of seven hundred and fifty thousand dollars "out of the revenues of the District of Columbia," for the exclusive use of the said defendants, which is a private use, and not a public governmental use.

7. That the public moneys of the District of Columbia are raised chiefly by direct taxation on the lands therein, and that the
19 complainant is obliged to pay, and does pay, direct taxes on lands owned by him therein.

8. That the principles of apportionment established in the Constitution secures the said District from any oppressive exercise by Congress of the power to lay and collect direct taxes therein for any but the public governmental purposes of the said District.

9. That neither the Government of the United States nor that of the District of Columbia is authorized by the Constitution to take private property by taxation for any but a public governmental use; or to take it at all without due process of law; or to take such prop-

erty upon the pretext of a public use, and afterwards devote it to private uses, as is done by the acts of Congress above mentioned.

10. That the uses to which the revenues of the said District are directed by the said acts to be applied, being private, and not public governmental uses, they constitute a gross misappropriation and squandering of public funds, in which the complainant has an interest which this court is bound to protect.

11. That if the defendant, The Treasurer of the United States, who, in pursuance of the act of June 11, 1878, aforesaid, has the custody of the funds of the said District, should pay the sums of money appropriated aforesaid, the assets of the said District would be excessively dimished thereby; so that new and exorbitant taxes would be required to meet the legitimate expenses of the District government, and the complainant would in consequence thereof be grievously oppressed.

20 12. That for the reasons above stated the said act of Congress, approved February 28, 1903, and the provisions of the two acts approved February 12, 1901, which are adopted and continued in force thereby, are repugnant to the Constitution of the United States, in that they violate those provisions thereof which declare that "no capitation or other direct tax shall be laid unless in proportion to the census or enumeration" therein directed to be taken; and that "no person shall be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation."

13. That the complainant is without any adequate remedy at law in the premises; and that he and all other citizens of the said District upon whom direct taxes are laid in violation of the said constitutional safeguards, will suffer irreparable damage and injury by reason of the execution of the acts of Congress mentioned in the preceding section, if the same are allowed to be carried into full effect by the defendants, contrary to the letter and spirit of the Constitution of the United States.

14. That the plaintiff is informed and believes that the defendants, each and all of them will, immediately proceed to carry said acts into execution, unless they are prohibited from so doing by the order and decree of this court.

15. That the act of Congress entitled "An act to provide for eliminating certain grade crossings in the District of Columbia, to require and authorize the construction of new terminals for the Baltimore and Ohio Railroad Company in the city of Wash-

21 ington, and for other purposes," approved February 12, 1901; and also the act of Congress entitled "An act to provide for eliminating certain grade crossings of the Baltimore and Potomac Railroad Company in the city of Washington, District of Columbia, and requiring said company to depress and elevate its tracks, and to enable it to re-locate parts of its railroad therein, and for other purposes," approved February 12, 1901; and also the act of Congress entitled "An act to provide for a union railroad station in the Dis-

trict of Columbia, and for other purposes," approved February 28, 1903, are the three acts referred to in the sixth section of the original bill filed in this suit on August 12, 1903, and being, as charged in said section of said original bill acts which provide for raising revenue, are repugnant to article 1, section 7, clause 1, of the Constitution, and are therefore null and void *ab initio* and to their entire extent because they and each and every one of them, originated in the Senate and not in the House of Representatives, as required by said article 1, section 7, clause 1 of the Constitution of the United States for proof of which the complainant refers to the 33rd, 34th, 35th and 36th volumes of the Congressional Record and especially to those pages thereof which are noted in the indexes to the 33rd and 34th volumes thereof referring to the proceedings on the two bills, Senate 1929 and Senate 2329, and to those pages noted in the indexes to the 35th and 36th volumes thereof referring to the proceedings on the bill Senate 4825; and the complainant files as exhibits to his bill, the said volumes of the Congressional Record above named and enumerated and prays that all and every one of
22 said records may be made a part of his bill and that each of the acts of Congress as above referred to, may be read as a part of said amended bill at the hearing of this cause.

*Prayers.*

Wherefore the complainant prays:

1. That the United States writ of subpœna may issue from this court directed to each of the defendants above named, commanding them severally to appear before this court on a day therein named and answer the exigencies of this amended bill.

2. That the defendant, Ellis H. Roberts, as Treasurer of the United States, and *ex-officio* treasurer of the District of Columbia, be enjoined and strictly forbidden by this court and the authority thereof from paying over to any person or persons whatsoever, at any time, any moneys of the District of Columbia, by virtue of, or under, any claim that may be made for such payment, in pursuance of any of the acts of Congress mentioned and described in section 5 and six of this bill; any warrants drawn by the Secretary of the Treasury purporting to authorize such payments to the contrary notwithstanding; and that all the other defendants above named be likewise enjoined and strictly forbidden from carrying into effect, or in any manner attempting to carry into effect, the provisions of the acts of Congress above complained of, or any part of the same; and that the said acts of Congress be declared null and void for want of constitutional authority.

3. That the plaintiff may have such other and further relief
23 in the premises as the nature of the same may require.

The defendants in this case are: Ellis H. Roberts, Treasurer of the United States; Henry B. F. Macfarland, Henry L. West

and John Biddle, Commissioners of the District of Columbia; The Philadelphia, Baltimore and Washington Railroad Company; The Philadelphia, Wilmington and Baltimore Railroad Company; The Baltimore and Potomac Railroad Company; The Baltimore and Ohio Railroad Company; and The Washington Terminal Company.

JOSIAH MILLARD.

DISTRICT OF COLUMBIA, *ss:*

I, Josiah Millard, being first duly sworn depose and say that I have read the foregoing bill of complaint by me subscribed and know the contents thereof, that the facts therein stated from my personal knowledge are true, and those stated upon information and belief I believe to be true.

JOSIAH MILLARD.

Subscribed and sworn to before me this 20th day of November, A. D. 1903.

J. R. YOUNG, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk.*

W. PRESTON WILLIAMSON,
*Of Counsel for Plaintiff.*

24 *Order Discontinuing Cause as to Certain Def'ts.*

Filed January 18, 1904.

Supreme Court of the District of Columbia.

JOSIAH MILLARD, Complainant,
*vs.*
ELLIS H. ROBERTS, Treasurer, &c., ET AL. } In Equity. No. 24131, Doc. 54.

This cause coming on to be heard on the bill of complaint and the suggestion of Harry Willian heretofore filed herein and it appearing to the court that the Baltimore & Potomac Railroad Company and the Philadelphia, Wilmington and Baltimore Railroad Company had prior to the institution of this cause become merged in the Philadelphia Baltimore & Washington Railroad Company and were at said time without corporate existence. It is this 18th day of January, A. D. 1904 adjudged and ordered that this cause be and the same hereby is discontinued as to said Baltimore & Potomac Railroad Company and Philadelphia Wilmington & Baltimore Railroad Company, and it further appearing to the court that the Philadelphia Baltimore & Washington Railroad Company is a proper party to said cause, and that said company has not been served with process or

otherwise made a party herein. It is further ordered that the hearing of the demurrers heretofore filed in this cause stand over until a further day.

THOS. H. ANDERSON,
*Asso. Justice.*

25 *Demurrer.*

Filed March 31, 1904.

In the Supreme Court of the District of Columbia.

| | |
|---|---|
| JOSIAH MILLARD, Plaintiff, *vs.* ELLIS H. ROBERTS, Treasurer of the United States, *et al.*, Defendants. | In Equity. No. 24131, Docket 54. |

The defendant, The Philadelphia, Baltimore and Washington Railroad Company, by protestation not admitting or acknowledging to be true any of the matters and things contained in the bill of complaint in the above entitled cause as amended, demurs thereto, and for causes of demurrer says:

1. That the said complainant has not in and by his said bill as amended, stated any cause of action of which this court can or ought to take cognizance;

2. That the said complainant has not in and by his said bill as amended, stated such a cause of action as entitles or ought to entitle him to the relief therein prayed for.

Wherefore, and for divers other errors and imperfections, this defendant prays the judgment of this court whether it shall be compelled or required to make any further or other answer to said bill of complaint as amended, or any of the matters and things therein contained; and prays to be hence dismissed with its reason-
26 ble costs in this behalf sustained.

F. D. McKENNEY,
J. S. FLANNERY,
*Solicitors for the Defendant The Philadelphia, Baltimore and Washington Railroad Co.*

I, John S. Flannery, one of the solicitors for the above named defendant, The Philadelphia, Baltimore and Washington Railroad Company, do hereby certify that in my opinion the foregoing demurrer is well founded in law.

J. S. FLANNERY.

DISTRICT OF COLUMBIA, *ss:*

I, Joseph Crawford, being duly sworn, depose and say that I am the general agent in the District of Columbia of The Philadelphia,

Baltimore and Washington Railroad Company, the above named defendant, and that the foregoing demurrer is not interposed for the purposes of delay.

JOS. CRAWFORD.

Subscribed and sworn to before me this 31st day of March, A. D. 1904.

WILLIAM CAREY JOHNSON,
*Notary Public, D. C.*

[SEAL.]

27 *Decree.*

Filed July 2, 1904.

In the Supreme Court of the District of Columbia.

JOSIAH MILLARD
*vs.*
ELLIS H. ROBERTS, Treasurer of the United States, and Others. } Eq. No. 24131.

This cause came on to be heard upon the demurrer of the several defendants herein to the original bill of complaint herein and the amended bill of complaint, and was argued by counsel and considered by the court, and thereupon it is by the court this 2nd day of July, A. D. 1904, adjudged, ordered and decreed that said several demurrers be and they are hereby sustained, and said original bill of complaint and said amended bill of complaint are hereby dismissed with costs against the complainant, for which the defendants shall have execution as at law.

THOS. H. ANDERSON, *Justice.*

Appeal from this decree prayed in open court and allowed and bond fixed at one hundred and fifty (150) dollars or seventy-five dollars cash deposited with the clerk in lieu thereof.

THOS. H. ANDERSON, *Justice.*

28 *Memorandum.*

July 26, 1904.—Appeal bond filed.

*Order for Transcript of Record.*

Filed August 29, 1904.

In the Supreme Court of the District of Columbia.

JOSIAH MILLARD, Complainant,
*vs.*
ELLIS H. ROBERTS, Treasurer of the United States, *et al.* } In Equity. No. 24131, Doc. 54.

The clerk will please prepare the transcript of the record in the above entitled cause and include therein—

The original bill.
Demurrer of the District of Columbia.
Suggestion of Harry Willian, of the non-existence of certain defendant corporations.
Demurrer of the Baltimore and Ohio Railroad Co.
" " " Washington Terminal Co.
" " " Ellis H. Roberts Treasurer of the U. S.
Leave to file amended bill.
Amended bill.
Order discontinuing cause as to non-existing defendant corporations.
Demurrer of the Philadelphia Baltimore and Washington R. R. Co.
Decree.
29 Allowance of appeal.
Memorandum as to filing bond.
Opinion and this precipe.

S. HERBERT GIESY,
*Solicitor for Complainants.*

30 *Opinion by Mr. Justice Anderson.*

Filed Sept. 7, 1904.

In the Supreme Court of the District of Columbia.

JOSIAH MILLARD, Plaintiff,
*vs.*
ELLIS H. ROBERTS, Treasurer of the United States, *et al.*, Defendants. } Equity. No. 24131.

The object of the original bill in this case is to enjoin the payment of $1,500,000 to the Baltimore & Ohio Railroad Co. and the payment of a like sum to the Philadelphia, Baltimore & Wash-

ington Railroad Co., under the provisions of the act of February 28, 1903, known as "The Union Station act," and of two prior acts, of February 12, 1901, relating to these same railroad companies, and providing for the elimination of grade crossings in the District of Columbia, upon the ground that these acts are unconstitutional, in that they appropriate public moneys to private use.

An amended bill was filed by the complainant which also charges that the act of February 28, 1903, is invalid because it is a revenue measure and originated in the Senate instead of in the House of Representatives, as required by article 1, section 7, clause 1, of the Constitution.

Separate demurrers have been filed by the several defend-
31 ants, which demurrers are directed as well to the amended as to the original bill.

The grounds upon which the complainant contends that these acts are invalid, as enumerated in his briefs, and as urged upon the court in the argument, are:

1. That the several acts referred to originated in the Senate and not in the House of Representatives, as is required by article 1, section 7, clause 1 of the Constitution of the United States in all cases where bills are introduced for *raising revenue.*

2. That every one of the said acts provides for direct taxation on the property and privileges of the people of the District of Columbia, exclusive of the States, and is not apportioned among the States according to their Federal population, as required by article 1, section 2, clause 3, as amended by article 14, section 2, of the amendments to the Constitution; and, therefore, that every one of them is repugnant to the Constitution, and is strictly forbidden by article 1, section 9, clause 4 thereof.

3. That said acts discriminate against the inhabitants of the District of Columbia, considered as a class in contradistinction to the inhabitants of the States, and in this respect constitute class legislation, and are therefore unconstitutional.

4. That by virtue of the said acts private property is taken for private use in violation of the Constitution of the United States; that private property can not be taken by taxation for any
32 but a public governmental use, and that the question what is such a use is a judicial and not a legislative question.

5. That the doctrine of *ultra vires* is no less applicable to an act of Congress than to that of any other corporate body, whenever such act is in excess of its delegated powers.

6. That by the ninth amendment to the Constitution of the United States all the rights of the people not enumerated elsewhere in that instrument are expressly reserved, and are thus protected against invasion by the Federal Government; that the right not to be taxed for any but a public governmental purpose is thus protected.

7. That under the fifth amendment to the Constitution of the United States no person can be deprived of life, liberty or property without due process of law.

These cover the whole range of the points made in the argument on behalf of the complainant.

Since the consideration of this case comes before the court on demurrer, it is only necessary to determine whether or not it sufficiently appears from the allegations of the bill of complaint, that the acts in question are void. The demurrers admit that the complainant is a taxpayer as he alleges.

It is not my purpose to go into any extended review of the
33 law in this case. I do not think it would serve any good purpose. It is my purpose, rather, to state my conclusions, with some reference to the authorities upon which the court relies.

It is manifest, it seems to me, from a mere reading of these acts, that they are not acts for the raising of revenue, but for the abolition of grade crossings within the District of Columbia. The raising of revenue, as I understand these acts, as I interpret them, and as they must necessarily be interpreted, in the light of the decisions and in the light of the language employed, is a mere incident to the carrying into effect of the main objects of the acts.

The case of Twin City Bank *v.* Nebeker, 167 U. S., 196, is an instructive one in this connection. That was a suit filed by the bank against the Treasurer of the United States to recover certain moneys paid to him under protest, the contention of the bank being that the section of the act of June 3, 1864 providing a national currency secured by a pledge of United States bonds, and for the circulation and redemption thereof, so far as it imposed a tax upon the average amount of the notes of a national banking association in circulation, was a revenue bill within the clause of the Constitution declaring that "all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills." That bill originated in the House. There was not in it at that time—when the bill was proposed in the House,—the provision imposing the tax. In other words, the
34 bill as it passed the House contained no provision imposing the tax. That feature of the bill originated in the Senate, by way of amendment. The Supreme Court of the United States, speaking by Mr. Justice Harlan, said (pp. 202, 203).

"Mr. Justice Story has well said that the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue. Story on Constitution, section 880.

The main purpose that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question. The tax was a means for effectually accomplishing the great object of giving to the people a currency that would rest, primarily, upon the honor of the United States, and be available in every part of the country. There was no purpose by the act or by any of its provisions to raise revenue

to be applied in meeting the expenses or obligations of the Government."

Reading further from the case of Twin City Bank *v.* Nebeker, at p. 203, Mr. Justice Harlan goes on to say:

"This interpretation of the statutes renders it unnecessary to consider whether, for the decision of the question before us, the journals of the two houses of Congress can be referred to for the pur-
35 pose of determining whether an act duly attested by the official signatures of the President of the Senate and Speaker of the House of Representatives, and the President, and which is of record in the State Department as an act passed by Congress, originated in the one body or the other."

So, in the present case, it seems to me that the further question, whether the Congressional Record tendered to the court on the hearing as evidence may be referred to in determining whether an act originated in the one body or the other, is of no consequence.

The other objections urged by the complainant to the acts of Congress referred to may well, it seems to me, be summarized into the single proposition of whether or not the sums provided to be paid to the railroad companies are gratuities. The point urged by the complainant, that the acts provided for direct taxation on the property and privileges of the people of the District of Columbia, exclusive of the States, and are consequently repugnant to the constitutional rule of apportionment, is not deserving of separate consideration, for the reason that, unless these sums be in reality gratuities, Congress has an undoubted right to tax the people of the District, as in its wisdom it may see fit to pay part of the expenses necessarily incident to the elimination of grade crossings, and thus lessening the dangers to which they are subjected. This comes clearly within the exercise of the police power, and is such an elementary proposition that it would serve no useful purpose to make any citation of authority.

36 It only remains, therefore, to be determined, whether or not the sums of money appropriated for these two railroad companies were gratuities.

Without entering into any detailed discussion of the provisions of the two acts of 1901 and the act of 1903, it is sufficient to say that they all have for their object, as I have already stated, the elimination of grade crossings in the District of Columbia. The two acts of 1901 provided for two separate terminals, one in South Washington, and one in East Washington. It was subsequently sought by Congress to so far modify these two acts as to make provision for one union terminal station, since by virtue of the two acts of 1901, two sections of the District would be subjected to railway uses and encumbered with bridges and elevated tracks. Therefore the act of 1903 was passed.

The contention that the $1,500,000 provided to be paid to the Baltimore & Ohio Railroad Co. is a gratuity and without considera-

tion, seems to be fully met by section 8 of the act approved February 12, 1901, as follows:

"In consideration of the surrender by the Baltimore & Ohio Railroad Company, under the requirements of this act, of its right under the several acts of Congress heretofore passed, and under its several contracts with the municipal authorities of the city of Washington authorized by said acts of Congress, and in consideration of the large expenditures required for the construction of the new ter-
37 minals, viaduct, and connecting railroads, as required by this act, to avoid all grade crossings of streets and avenues within the city of Washington, and, further, in consideration of the grant and conveyance to the United States of the lands included within the limits of the roadway and right of way of the Washington Branch railroad, which can be used for a street or avenue for the public benefit, the sum of one million five hundred thousand dollars, to be paid to said railroad company toward the cost of the construction of said elevated terminals, viaduct, and structures within the city of Washington, shall be, and is hereby, appropriated, one half to be paid out of any money in the Treasury of the United States not otherwise appropriated, and the other half to be paid out of the revenues of the District of Columbia."

So also the contention that the $1,500,000 provided to be paid to the Philadelphia, Baltimore and Washington Railroad Co. is a gratuity and without consideration, seems to have its complete answer in the express provisions of the act itself. Sec. 8 of that act, which was approved February 28, 1903, provided:

"And in consideration thereof, and of the relinquishment and surrender by said Philadelphia, Baltimore and Washington Railroad Company of its right to occupy and use the portion of the Mall, and to maintain thereon a new passenger station and terminals, granted to the Baltimore and Potomac Railroad Company by
38 the act aforesaid in consideration of and as a contribution toward the large expenditures to be made by said company in the relocation and improvement of its line of railroad and elimination of grade crossings resulting therefrom, as required by said act, the sum of one million five hundred thousand dollars shall be paid to said Philadelphia, Baltimore and Washington Railroad Company, its successors and assigns, out of any moneys in the Treasury of the United States not otherwise appropriated."

It will be observed that under this section just read, the entire $1,500,000 is to be paid out of any moneys in the Treasury of the United States not otherwise appropriated. Not a dollar under the provision of that act is to be paid, so far as its language is concerned,—and that is all that can govern the court, and that is the law—out of the treasury of the District of Columbia, or out of its funds. This distinction is, however, of no especial importance.

How can it be in anywise seriously contended that the moneys appropriated are for a private, and not a public or governmental use? It is purely and simply a case of legislation in the nature of

the exercise of the police power of the Government to pay for safety given to the people out of the taxes raised. All measures which have for their object the safety of the lives and health of the public come within the police power.

It seems to me it would be futile to enter into a discussion
39 of the many cases cited by counsel for the defendant showing it to be competent for the legislature, under the police power, to require the elimination of grade crossings, and to cause the expense of such elimination to be borne in such manner as its wisdom might dictate. The principal case relied upon by the complainant, namely, that of Hanson *v.* Vernon, 27 Iowa, 42, expressly recognizes that, while a tax cannot be levied upon the people for the benefit of a private corporation, yet that under certain circumstances, where a matter may be said to come within the exercise of the police power, it cannot be doubted that such legislation is valid.

In the case of New York and New England Railroad Company *v.* Bristol, 151 U. S. 556, which was a case that involved the act of the legislature of the State of Connecticut relating to railway grade crossings, passed June 19, 1889, which act had as its object the extinction of grade crossings as a menace to public safety of the people of that State, the court held that that was a proper exercise of the police power of the State, and Chief Justice Fuller, in speaking for the court, said:

"It must be admitted that the act of June 19, 1889, is directed to the extinction of grade crossings as a menace to public safety, and that it is therefore within the exercise of the police power of the State. And, as before stated, the constitutionality of similar prior statutes as well as of that main question, tested by the provis-
40 ions of the State and Federal Constitutions, has been repeatedly sustained by the courts of Connecticut,"—citing a long line of authorities.

"In Woodruff *v.* Catlin, the court, speaking through Pardee, J., said in reference to a similar statute: 'The act in scope and purpose, concerns protection of life. Neither in intent nor fact does it increase or diminish the assets either of the city or of the railroad corporations. It is the exercise of the governmental power and duty to secure a safe highway. The legislature having determined that the intersection of two railways with a highway in the city of Hartford at grade is a nuisance dangerous to life, in the absence of action on the part either of the city or of the railroads, may compel them severally to become the owners of the right to lay out new highways and new railways over such land and in such manner as will separate the grade of the railways from that of the highway at intersection; may compel them to use the right for the accomplishment of the desired end; may determine that the expense shall be paid by either corporation alone or in part by both; and may enforce obedience to its judgment. That the legislature of this State has the power to do all this, for the specified purpose, and to do it through the instrumen-

tality of a commission, it is now only necessary to state, not to argue.'"

41 And so in this case, the Congress of the United States has determined that these grade crossings are dangerous, are a constant menace to the life and to the health of the general public. It was for the Congress to pass upon that subject, and, having the right to determine whether the public welfare demanded the removal of these grade crossings, the only question that this court can pass upon is whether they proceeded properly in so declaring, and in the provisions of this act looking to the elimination or compelling the elimination of these grade crossings.

Mr. Chief Justice Fuller, in New York and New England Railroad Co. *v.* Bristol, continues: (p. 567)

"And as to this act, the court in 58 Conn. 552, on this company's appeal, held that grade crossings were in the nature of nuisances which it was competent for the legislature to cause to be abated, and that it could, in its discretion, require any party responsible for the creation of the evil, in the discharge of what were in a sense governmental duties, to pay any part, or all, of the expense of such abatement."

As the court said in that case, grade crossings are in the nature of nuisances which it is competent for the legislature to cause to be abated. That these grade crossings are a constant menace to human life can not be denied. The presence of great trunk lines crossing at grade through the heart of a great and growing city such as Washington, is not only a menace to life, but it is a menace

42 to the public health. They are obstructions in the way of necessary improvements, attendant upon the establishment of proper sanitary conditions throughout the municipality. Railroad trackage crossing right through the heart of the city, on a grade with the streets, and on a grade where people are necessarily obliged to come and go constantly, is a constant menace to human life. The increasing trackage incident to increasing business, the network of tracks and the resulting obstructions to municipal improvements, as I have stated, which have as their object the establishment or the maintenance of proper sanitary conditions, must appeal to everybody as a sufficient reason in itself for removing these grade crossings in order that the health of the public may be preserved, and the lives of the people protected.

Quoting again from the case of New York and New England Railroad Co. *v.* Bristol: (p. 567)

"It is likewise thoroughly established in this court that the inhibitions of the Constitution of the United States upon the impairment of the obligation of contracts, or the deprivation of property without due process or of the equal protection of the laws, by the States, are not violated by the legitimate exercise of legislative power in securing the public safety, health and morals. The governmental power of self protection can not be contracted away, nor can the exercise of rights granted, nor the use of property, be with-

drawn from the implied liability to governmental regulation in particulars essential to the preservation of the community from injury."

43 As said by the Supreme Court of the United States in a long train of decisions, one of the most recent of which is that of Nicol *v.* Ames, 173 U. S. 514:

"It is always an exceedingly grave and delicate duty to decide upon the constitutionality of an act of Congress of the United States. The presumption, as has frequently been said, is in favor of the validity of the act, and it is only when the question is free from any reasonable doubt that the court should hold an act of the lawmaking power of the nation to be in violation of that fundamental instrument upon which all the powers of the Government rest."

Therefore it is, that the courts have uniformly adhered to the general proposition that an attack upon a law, by reason of the alleged unconstitutionality of the act, will not be sustained unless the act is so manifestly unconstitutional that there is no reasonable doubt about it. In other words, every reasonable doubt will be resolved in favor of the constitutionality of the law. But it is not necessary to resort to that principle in the present case, because not only has the complainant, it seems to me, failed wholly to show that the acts of Congress complained of are invalid beyond a reasonable doubt, but, on the contrary, the court has been unable to find any reasonable doubt to exist as to the validity and constitutionality of these acts.

Judge Cooley, in his "Principles of Constitutional Law," sections 57, 58, says:

44 "Primarily, the determination what is a public purpose belongs to the legislature, and its action is subject to no review or restraint so long as it is not manifestly colorable. All cases of doubt must be solved in favor of the validity of legislative action, for the obvious reason that the question is legislative, and only becomes judicial when there is a plain excess of legislative authority. A court can only arrest the proceedings, and declare a levy void, when the absence of public interest in the purpose for which the funds are to be raised is so clear and palpable as to be perceptible to any mind at first blush."

"But sometimes the public purpose is clear, though the immediate benefit is private and individual. For example, the Government promises and pays bounties and pensions; but in every case the promise or payment is made on a consideration of some advantage or service given or rendered, or to be given or rendered, to the public, which is supposed to be an equivalent; and the law for the payment has in view only the public interest, and does not differ in principle or purpose from a law for the payment of salaries to public officers. The same is true where a State continues the payment of salaries to officers who have become superannuated in its service. The question whether they shall be paid is purely political, and re-

solves itself into this; Whether the State will thereby probably secure better and more valuable service, and whether, therefore, it would be wise and politic for the State to give the seeming bounty."

45 Even were the express contract features of the acts to be disregarded, it is manifest that Congress considered it to be but just and equitable that a portion of the expense necessarily incident to the elimination of the grade crossings, which, by the way, constitute a distinct public benefit, should be borne by the United States and the District of Columbia, and the Supreme Court of the United States has, in a number of cases, expressly recognized the right of Congress to discharge, not only its strictly legal obligations, but also those which are founded upon equitable and moral considerations and grounded upon principles of right and justice. In United States *v.* Realty Co., 163 U. S., 440, the Supreme Court said: (referring to the action of the legislature)

"Its decision recognizing such a claim and appropriating money for its payment can rarely, if ever, be the subject of review by the judicial branch of the Government."

Not only, therefore, does it not sufficiently appear from the bill of complaint in this case that the acts of Congress referred to are void, but, on the contrary, it expressly appears beyond any doubt, at least in my view of these acts, that they are valid and constitutional.

It is argued in the brief on behalf of the complainant, that no line of distinction must be drawn between corporations and the people, and that the rights of the people are as sacred as the rights of corporations. So they are, but not more so. Corporations are creatures of the law, and are as much entitled to the protection of the law as are the rights of the citizens entitled to the protection of the law. Speaking for myself, I have never had any more

46 than reasonable patience with an appeal to the court upon the ground that it might possibly be led astray and its judgment set at naught where the contest is between the people and a corporation. No man who is worthy of sitting upon the bench can know, in his own conscience, any difference between the individual who comes into his court to litigate his rights, and a corporation; and *vice versa*. So that the railroad companies are not entitled to, and do not claim, any consideration here because they are corporations. The bill shows, and the whole case discloses, that the railroad companies are not here upon their own motion, but they have been forced into this situation by the acts of Congress. Both of these railroads, by virtue of acts of Congress, and the Baltimore and Ohio railroad, by virtue of a contract with the common council of this city, had acquired the right to maintain their railways at grade crossings, the latter until 1910, and the Pennsylvania railroad for an indefinite time, so far as I know. They had certain vested rights. They were not mere squatters within the territorial limits of the District of Columbia, but they came here by permission of Congress, pursuant to its acts, and had acquired important holdings and vested

rights here that could not be peremptorily taken away from them. Therefore, as I say, they are not here upon their own motion. They are here because they are forced here by the acts of 1901, and the final act of 1903.

It seems to me that in the surrender of their property, and their vested rights and privileges, there is ample consideration
47 found in this case to justify Congress in making the appropriation that has been made, to the end I have stated—not primarily for the benefit of the railroads, but for the benefit of the people. Three hundred thousand people, more or less, are now residing in this city. The tracks of these two great corporations, and of other corporations, or the traffic incident to other lines of railway entering the city, as I stated a while ago, pass right through the very heart of this city. Congress very wisely recognized, as they alone had the right to recognize, that the maintenance of these tracks had come to be in the nature of a public nuisance, and that it was necessary, in order to conserve the lives and health of the people, that they should be removed. Is it possible that because the Congress of the United States, in enforcing this police power, sought to do what it regarded as the just thing, by providing something toward that expense, it must be said to be violating the law and doing an unconstitutional thing; or, on the other hand, that the contribution to the railroad companies was the main thing, and the abolition of the railway crossings is the incidental thing? Not at all. By the very title of the act, the purpose is plainly declared.

Without enlarging any more upon these things, I am perfectly satisfied that the points raised here, presented by the bill and by the amendment to the bill, are not well taken, and it is the duty of the court to sustain the several demurrers thereto, which is accordingly done.

THOS. H. ANDERSON, *Justice.*

48 *Order Extending Time to File Record.*

Filed September 7, 1904.

In the Supreme Court of the District of Columbia.

| | |
|---|---|
| JOSIAH MILLARD *vs.* ELLIS H. ROBERTS, Treasurer of the U. S., *et al.* | In Equity. No. 24131, Doc. 54. |

This cause came on to be heard, at this term upon the motion of the plaintiff by his attorney S. Herbert Giesy for an extension of time in which to file the transcript of the record in the Court of Appeals because the clerk can not prepare it in time; and thereupon upon consideration thereof it is ordered and adjudged this 7th day

of September, 1904 that the time for filing the transcript in the Court of Appeals be extended to the 15th. day of October, 1904.

THOS. H. ANDERSON, *Justice.*

49 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 48, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 24,131, in equity, wherein Josiah Millard is complainant, and Ellis H. Roberts, Treasurer of the United States, *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 5th day of October, A. D. 1904.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1481. Josiah Millard, appellant, *vs.* Ellis H. Roberts, Treasurer of the United States, *et al.* Court of Appeals, District of Columbia. Filed Oct. 10, 1904. Henry W. Hodges, clerk.

JOSIAH MILLA

*vs.*

I. ROBERTS, TREASU

RY B. F. MACFARI

OHN BIDDLE, COMM

LUMBIA; THE PHIL

WASHINGTON RA

IMORE AND OHIO

HE WASHINGTON

---

FROM THE SUPREME

COLUM

---

## BRIEF FOR

---

GEORGE

MICHAE

*Attorneys for the Balt*

WAYNE

FREDERI

# Court of Appeals, District of Columbia.

**JANUARY TERM, 1905.**

## No. 1481.

JOSIAH MILLARD, APPELLANT,

*vs.*

ELLIS H. ROBERTS, TREASURER OF THE UNITED STATES; HENRY B. F. MACFARLAND, HENRY L. WEST, AND JOHN BIDDLE, COMMISSIONERS OF THE DISTRICT OF COLUMBIA; THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, AND THE WASHINGTON TERMINAL COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

## BRIEF FOR APPELLEES.

This is an appeal from a decree of the supreme court of the District of Columbia in favor of the defendants below in a suit in equity instituted by the complainant, as a citizen of the United States and a taxpayer of the District of Colum-

bia, to restrain and enjoin the payment of the sum of $1,500,000 to the Baltimore and Ohio Railroad Company appropriated by the act of Congress approved February 12, 1901 (31 Stats. L., 774), providing for the elimination of grade crossings upon the line of said railroad company in the District of Columbia, and the payment of a like sum to the Philadelphia, Baltimore and Washington Railroad Company (the successor by merger or consolidation of the Baltimore and Potomac and the Philadelphia, Wilmington and Baltimore Railroad Companies) appropriated by the act of Congress approved February 28, 1903 (32 Stats. L., 909), commonly known as the Union Station bill, and seeking to have said acts, as well as the act of February 12, 1901 (31 Stats. L., 767), providing for the elimination of grade crossings upon the line of the Baltimore and Potomac Railroad Company, in said District, declared unconstitutional and void in so far as they direct said payments to be made and authorize the levying of a tax for the purpose of meeting them.

The objections to the statutes in question set forth in the original and amended bills of complaint and in the appellant's assignments of error seem to us to resolve themselves into two propositions:

1. That the appropriations for payments to said railroad companies carried by said acts of 1901 and 1903 are unconstitutional and void because they amount to a gratuity and constitute an appropriation of public moneys for a private use.

2. That said acts are void because they are revenue measures and originated in the Senate instead of in the House of Representatives, as required by article I, section 7, of the Constitution of the United States (Rec., 11).

No evidence was introduced by the complainant. The case came on for hearing in the court below before Mr. Jus-

tice Anderson upon the original and amended bills and demurrers interposed thereto by the various defendants, and on July 2, 1904, the court entered a decree sustaining said demurrers and dismissing the cause for want of equity (Rec., 17).

In his opinion the chancellor very fully and ably reviewed the law bearing upon the issues involved (Rec., 18–27).

## Points and Authorities.

### I.

### The act of February 28, 1903, and the two acts approved February 12, 1901, do not appropriate public moneys or levy taxes upon the taxpayers of the District of Columbia for private purposes.

The Baltimore and Ohio Railroad Company was authorized to enter the District of Columbia by the act of Congress approved March 2, 1831 (4 Stats. L., 476), and from the date of the completion of its railroad in said District to the date of the passage of said act of February 12, 1901, it had acquired, and had been exclusively occupying and using, under the authority of various acts of Congress and under contracts with the municipal authorities of the District of Columbia, portions of the public streets, public reservations, and other valuable property of the United States, the District of Columbia, and of individuals. In consideration for the conveyance to the United States of the valuable property mentioned in the act of 1901 and of the relinquishment of its vested rights in the public streets and reservations therein specified, and as a contribution towards the great expense which it was called upon to incur for the elimination of grade crossings upon its line of railroad in the District of Columbia, this payment of $1,500,000 was authorized, one-half thereof being contributed by the United States

and the other half to be paid out of the revenue of the District of Columbia.

The consideration for the payment is expressly set forth in paragraph 3 of the 8th section of said act, which reads:

"In consideration of the surrender by the Baltimore and Ohio Railroad Company, under the requirements of this act, of its rights under the several acts of Congress heretofore passed, and under its several contracts with the municipal authorities of the city of Washington authorized by said acts of Congress, and in consideration of the large expenditures required for the construction of the new terminals, viaduct, and connecting railroads, as required by this act, to avoid all grade crossings of streets and avenues within the city of Washington, and, further, in consideration of the grant and conveyance to the United States of the lands included within the limits of the roadway and right of way of the Washington Branch railroad, which can be used for a street or avenue for the public benefit, the sum of one million five hundred thousand dollars, to be paid to said railroad company toward the cost of the construction of said elevated terminals, viaduct, and structures within the city of Washington, shall be, and is hereby, appropriated, one-half to be paid out of any money in the Treasury of the United States not otherwise appropriated, the other half to be paid out of the revenues of the District of Columbia. The sum so appropriated shall be paid upon presentation of a certificate by the Commissioners of the District of Columbia that the said viaduct has been completed as required by this act.

"In order to provide for the one-half of said amount chargeable to the District of Columbia, the Commissioners thereof shall, on the first day of July following the passage of this act, and annually thereafter, pay over to the Treasurer of the United States, out of the revenues of the District of Columbia, the sum of one hundred and fifty thousand dollars, to be invested by the said Treasurer in interest-bearing bonds of the United States or the District of Columbia, until the full sum of seven hundred and fifty thousand dollars, as provided herein, shall have been paid."

Nor is there any stronger foundation for the contention of the appellant that the payment to be made to the Philadel-

phia, Baltimore and Washington Railroad Company is a gratuity and without consideration.

The Baltimore and Potomac Railroad Company, the predecessor of the Philadelphia, Baltimore and Washington Railroad Company, was authorized to extend its lines of railroad into the District of Columbia by the act of Congress approved May 6, 1853 (14 Stats. L., 387), and by the act of Congress approved May 21, 1871 (17 Stats. L., 140), was authorized to hold, use, and occupy a portion of the public reservation at the intersection of Sixth and B streets N. W., and to construct thereon a passenger depot. This grant was coupled with the condition that the company should pay taxes thereon to the District of Columbia.

Subsequently, by the act of Congress approved February 12, 1901, which authorized the elimination of the grade crossings upon the line of the Baltimore and Potomac Railroad Company in the District of Columbia, the right of that company to occupy and use the portion of this reservation, commonly called the "Mall," which it had theretofore been occupying under authority of Congress and paying taxes upon for more than thirty years, was granted to it in perpetuity, and the grant was enlarged to include a large additional area of the reservation which, until then, had been in the exclusive possession of the United States. This act made no appropriation of money to the Baltimore and Potomac Railroad Company, the right to exclusively and perpetually use and occupy this valuable property of the United States evidently being regarded as the equivalent of the money contribution to be made to the Baltimore and Ohio Railroad Company by the twin act of the same date relating to the latter company.

The ink was hardly dry upon the signatures approving these acts of 1901 before the question of bringing both railroad companies together in one union station was agitated by the property-owners and Citizens' Associations of the District before the Commissioners and Congress. While the

railroad companies were content with the existing legislation, they finally acquiesced in this seemingly unanimous desire of the people of the District for a union station and expressed a willingness to build such a station and the necessary connections therewith, although such a vast improvement would subject them to an expense greatly in excess of that required by the acts of 1901. The act of February 28, 1903, was the result.

The object of this statute and the consideration for the payment of the $1,500,000 to the Philadelphia, Baltimore and Washington Railroad Company is clearly set forth in paragraph 2, section 8, thereof, which reads:

"The construction of the lines of railroad hereinbefore mentioned, connecting the railroad of said Philadelphia, Baltimore and Washington Railroad Company with said main passenger station and terminal, whether constructed wholly by said Philadelphia, Baltimore and Washington Railroad Company or said terminal company, or partly by each, shall relieve said Philadelphia, Baltimore and Washington Railroad Company of any and all duties and obligations respecting relocation of its present passenger tracks and terminal, and location, construction, and operation of new passenger station and new terminal tracks, as prescribed in the act relating to the Baltimore and Potomac Railroad Company, approved February twelfth, nineteen hundred and one; and *upon completion* either by said Philadelphia, Baltimore and Washington Railroad Company or said terminal company, or in part by one and in part by the other, of said connecting lines of railroad ready for use, in connection with said main passenger station and terminal, as contemplated by this act, and within five years from the passage of this act the said Philadelphia, Baltimore and Washington Railroad Company shall be, and it is hereby, required to remove its present eastern connection between its passenger station and its line on Virginia avenue via Sixth street, including the tracks on Sixth street, and its western connection via Maryland avenue, *and to convey its passenger-station building to the United States. And in consideration thereof, and of the relinquishment and surrender by said Philadelphia, Baltimore and Washington*

*Railroad Company of its right to occupy and use the portion of the Mall and to maintain thereon a new passenger station and terminals, granted to the Baltimore and Potomac Railroad Company by the act aforesaid in consideration of and as a contribution toward the large expenditures to be made by said company in the relocation and improvement of its line of railroad and elimination of grade crossings resulting therefrom, as required by said act, the sum of one million five hundred thousand dollars, shall be paid to said Philadelphia, Baltimore and Washington Railroad Company, its successors and assigns, out of any moneys in the Treasury of the United States not otherwise appropriated, and said sum of one million five hundred thousand dollars is hereby expressly appropriated for this purpose*, and shall be paid upon presentation of a certificate by the Commissioners of the District of Columbia that said passenger station and terminal and connecting lines of railroad contemplated by this act are ready for occupancy. Except as modified by this act, all provisions for said act relating to the Baltimore and Potomac Railroad Company approved February twelfth, nineteen hundred and one, and all rights, powers, remedies, and processes thereby conferred on said last-named company, or upon the Southern Railway Company, shall remain and continue in full force, and with like effect as if herein re-enacted at length; and all rights, powers, and privileges granted to, or duties imposed upon, said Philadelphia, Baltimore and Washington Railroad Company by this act shall accrue to and devolve upon its successors and assigns, as provided with respect to the Baltimore and Potomac Railroad Company by section fifteen of said act relating to said Baltimore and Potomac Railroad Company, approved February twelfth, nineteen hundred and one, and all provisions of said section shall be applicable thereto in all respects, and in like manner as they are made applicable to the rights, privileges and duties granted to or imposed upon said company by said last-named act."

It will be observed that no portion of this appropriation of $1,500,000 for the Philadelphia, Baltimore and Washington Railroad Company is payable out of the revenues of the District of Columbia or is to be raised by levying a tax upon the property of its taxpayers. The complainant below, as a taxpayer of the District of Columbia, had no such in-

terest in this matter, therefore, as would entitle him to the protection of equity.

This act also expressly provides that this payment is not to be made to said railroad company until it has fully performed the obligations imposed upon it by completing the union terminal, conveying its present passenger station to the United States and relinquishing and surrendering its rights to use and occupy the Mall. So far as this specific payment is concerned, therefore, even if the complainant had any interest in the matter enforceable in a court of equity, his action in instituting this suit is premature.

The abolition of these dangerous grade crossings would of itself have been a sufficient consideration to support the payment of the sum of three millions of dollars to these railroad companies. An examination of the report of the Commissioners of the District of Columbia, dated April 16, 1902, upon the Union Station bill, which will be found in a pamphlet entitled Federal and Local Legislation Relating to Canals and Steam Railroads in the District of Columbia (Senate Doc. 220, 57th Cong., 2d sess., 227, 229), shows that the estimated cost of making the improvements called for by that bill was $14,843,103, of which the railroad companies were to assume $10,073,103, and the United States and the District of Columbia were to contribute $4,770,000, the share of the District of Columbia being $1,635,000. It will be seen, therefore, that the District is called upon to pay less than one-ninth of the total cost of making the improvements resulting in the abolishment of grade crossings.

In this connection the following quotation from the report of the Senate Committee of the District of Columbia upon said bill, which will be found in the same compilation at pages 212, 213, shows there was no doubt in the minds of the legislators who framed it that the payments in question were to be made to the railroad companies upon a valuable consideration:

"During the Fifty-sixth Congress legislation was enacted enlarging the occupation of the railroad in the Mall. This action was taken only after years of effort to obtain the withdrawal of the road from public space, and because of the demand for the elimination of grade crossings, and increased facilities for handling the rapidly growing traffic. In the adjustment then made, the railroad received land in the Mall in lieu of the usual cash payment of one-half the cost of track elevation.

"The proposition now is that the United States shall buy, at a fair valuation, this land on which the railroad has been paying taxes for thirty years, and that the railroad shall use the money so received as a portion of the expense of building a tunnel and making connections with the proposed union station.

"This proposition does not come from the railroads. They are satisfied with their present situation. When the question of improving the District of Columbia was taken up, the removal of the railroad tracks from the Mall was considered absolutely essential. The Mall was laid out to form the great approach to the Capitol, and it is impossible to conceive any adequate treatment of the capital park system without freeing the Mall from the railroad tracks and station. When this view of the situation was placed before the president of the Pennsylvania railroad, he replied, after very careful consideration, that while he did not desire any change, yet he realized that if Washington is to have the development of a capital city in the true sense of that word, the railroad must leave the Mall, and he was willing to accept any adjustment that would be fair to the stockholders whose interests he represented.

"From the standpoint of economical railroad management, the proposed union station has little to recommend it. The terminal charges are increased from about 40 cents to $1.20 per passenger car, and there will be no corresponding increase in passengers. The Baltimore & Ohio Company, which does a comparatively small passenger business, claims that it would be much better off by keeping the C Street site provided for in existing legislation, especially as contemplated change compels that road to give up its present extensive and well located freight yards, and purchase city blocks in Eckington."

*We submit that Congress, in the acts themselves, having declared that the appropriations were made upon a valuable consideration and for a public purpose, the matter is not open to review in the courts.*

"But sometimes the public purpose is clear, though the immediate benefit is private and individual. For example, the Government promises and pays bounties and pensions; but in every case the promise or payment is made on a consideration of some advantage or service given or rendered, or to be given or rendered, to the public, which is supposed to be an equivalent; and the law for the payment has in view only the public interest, and does not differ in principle or purpose from a law for the payment of salaries to public officers. The same is true where a State continues the payment of salaries to officers who have become superannuated in its service. The question whether they shall be paid is purely political, and resolves itself into this: whether the State will thereby probably secure better and more valuable service, and whether therefore it would be wise and politic for the State to give the seeming bounty."

Cooley's Principles of Constitutional Law, 57, 58.
Cooley on Taxation, 2d ed., p. 111.

The Supreme Court of the United States has repeatedly held that, although railroad corporations are private corporations as distinguished from those created for municipal and governmental purposes, *their uses are public.*

N. Y. & N. E. R. R. Co. *vs.* Bristol, 151 U. S., 556, 571.

The power of States, counties, and municipalities to aid in the construction of railroads, upon the ground that railroads are *quasi* public institutions created and existing for the benefit of the public at large, is so well established by abundant authority that a mere reference to some of the

many decisions of the Supreme Court of the United States on this point would seem to be sufficient.

Olcott *vs.* Supervisors, 16 Wall., 698.
Curtis *vs.* County of Butler, 24 How., 447, 449.
Rogers *vs.* Burlington, 3 Walk., 665.
St. Joseph *vs.* Rogers, 16 Wall., 663.
Gillman *vs.* Sheboygan, 2 Black., 515.
Larned *vs.* Burlington, 4 Wall., 276.
Railroad Co. *vs.* County of Otoe, 16 Wall., 673.
Twnshp. of Pine Grove *vs.* Talbott, 19 Wall., 676.
U. S. *vs.* Railroad Co., 17 Wall., 330.
Loan Ass'n *vs.* Topeka, 20 Wall., 661.
Otoe Co. *vs.* Baldwin, 111 U. S., 15.

In the case of The N. Y. & N. E. R. R. Co. *vs.* Bristol, 151 U. S., 556, in which was involved an act of the legislature of the State of Connecticut abolishing grade crossings as a menace to public safety, the court held that this was a proper exercise of the police power of the State, and Chief Justice Fuller, in delivering the opinion of the court, said:

"It must be admitted that the act of June 19, 1889, is directed to the extinction of grade crossings as a menace to public safety, and that it is therefore within the exercise of the police power of the State. And, as before stated, the constitutionality of similar prior statutes as well as of that in question, tested by the provisions of the State and Federal constitutions, has been repeatedly sustained by the courts of Connecticut."

In this case the Supreme Court also held that, said crossings being in the nature of nuisances, the legislature might cause them to be abated and require either party to pay the whole or any portion of the expense.

*But even if the appropriations made by the acts of 1901 and 1903 could be regarded as donations they would still be legal and the acts providing therefor constitutional and valid.*

From the beginning of this Government Congress has made donations for the benefit of public-service corporations, in the nature of land grants, subsidies, and bounties, and such donations have been invariably sustained. As was said by the Supreme Court of the United States in the case of *Allen vs. Smith* (173 U. S., 402), "bounties granted by the Government are never pure donations, but are allowed either in consideration of service rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized."

In the Sugar Bounty cases (*U. S. vs. Realty Co.*, 163 U. S., 440), the Supreme Court said:

"Under the provisions of the Constitution, (article 1, section 8,) Congress has power to lay and collect taxes, etc., 'to pay the debts' of the United States. Having power to raise money for that purpose, it of course follows that it has power when the money is raised to appropriate it to the same object. What are the debts of the United States within the meaning of this constitutional provision? It is conceded and indeed it cannot be questioned that the debts are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term 'debts' includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The nation, speaking broadly, owes a 'debt' to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the Government which are thus founded. To no other branch of the Government than Con-

gress could any application be successfully made on the part of the owners of such claims or debts for the payment thereof. Their recognition depends solely upon Congress, and whether it will recognize claims thus founded must be left to the discretion of that body. Payments to individuals, not of right or of a merely legal claim, but payments in the nature of a gratuity, yet having some feature of moral oblig ation to support them, have been made by the Government by virtue of acts of Congress, appropriating the public money, ever since its foundation. Some of the acts were based upon considerations of pure charity. A long list of acts directing payments of the above general character is appended to the brief of one of the counsel for the defendants in error. The acts are referred to not for the purpose of asserting their validity in all cases, but as evidence of what has been the practice of Congress since the adoption of the Constitution. See, also, among other cases in this court, Emerson *v.* Hall, 13 Pet., 409; United States *v.* Price, 116 U. S., 43; Williams *v.* Heard, 140 U. S., 529. The last cited case arose under an act of Congress in relation to the Alabama claims.

* * * * * * *

"In regard to the question whether the facts existing in any given case bring it within the description of that class of claims which Congress can and ought to recognize as founded upon equitable and moral considerations and grounded upon principles of right and justice, we think that generally such question must in its nature be one for Congress to decide for itself. Its decision recognizing such a claim and appropriating money for its payment can rarely, if ever, be the subject for review by the judicial branch of the Government. Upon the general principle, therefore, that the Government of the United States, through Congress, has the right to pay the debts of the United States, and that the claims in these cases are of a nature which that body might rightfully decide to constitute a debt payable by the United States upon considerations of justice and honor, we think the act of Congress making appropriations for the payment of such claims was valid without reference to the question of the validity or invalidity of the original act providing for the payment of bounties to manufacturers of sugar, as contained in the tariff act of 1890" (Op., 444).

## II.

SAID ACTS OF 1901 AND 1903 ARE NOT REVENUE OR TAX MEASURES IN THE SENSE CONTEMPLATED BY THE CONSTITUTION.

It plainly appears from the title and recitals of the acts in question, as we have hereinbefore shown, that the sole purpose of this legislation was to bring about the construction of a union terminal and the abolition of the grade crossings in the District of Columbia. As an incident thereto, the acts made appropriations to the railroad companies to compensate them for the valuable property which they were required to convey to the United States and the vested rights which they were directed to relinquish, and also as a partial contribution from the District of Columbia and the United States towards the large expenditures which these companies were called upon to make to eliminate grade crossings for the protection of the lives and health of the residents of the District of Columbia.

The provisions of section 7, article I, of the Constitution, which requires that "all bills for raising revenue shall originate in the House of Representatives," cannot apply to any of the acts involved in this case, even if we should admit for the purposes of the argument that said acts did originate in the House of Representatives instead of in the Senate.

By "bills" is meant "money bills" (Story's Constitution, sec. 874). In practice it is applied to bills to levy taxes in the strict sense of the word (2 Elliot's Debates, 283, 284; Story's Constitution, sec. 880).

The case of *Twin City Bank vs. Nebeker* (167 U. S., 196) seems to us to be decisive of this question. That was a suit filed by the bank against the Treasurer of the United States to recover certain money paid to him under protest, the contention of the bank being that the section of the act of

June 3, 1864, providing a national currency secured by a pledge of United States bonds, and for the circulation and redemption thereof, so far as it imposed a tax upon the average amount of the notes of a national banking association in circulation, was a revenue bill within the meaning of the clause of the Constitution just referred to. The bill in that case had originated in the House of Representatives, but the provision imposing the tax was not in the bill as it passed the House, but originated in the Senate by amendment. Mr. Justice Harlan, in delivering the opinion of the court, said :

"Mr. Justice Story has well said that the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue (Story on Constitution, section 880).

"The main purpose that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question. The tax was a means for effectually accomplishing the great object of giving to the people a currency that would rest, primarily, upon the honor of the United States, and be available in every part of the country. There was no purpose by the act or by any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the Government."

* * * * * * *

"This interpretation of the statute renders it unnecessary to consider whether, for the decision of the question before us, the journals of the two houses of Congress can be referred to for the purpose of determining whether an act duly attested by the official signatures of the President of the Senate and Speaker of the House of Representatives, and the President, and which is of record in the State Department as an act passed by Congress, originated in the one body or the other."

A clause of the act of March 3, 1875 (18 U. S. Stats. L., 377), increasing the rate of postage on certain mail matter,

was held to be constitutional, although it originated in the Senate and was not an amendment to a bill for raising revenue, originating in the House of Representatives, upon the ground that it was not a bill for raising revenue, within the meaning of art. I, sec. 7, subdivision 1, of the Constitution, which provides that " All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills."

U. S. *vs.* James, 13 Blatch., 207.

The characteristic feature of bills for raising revenue is that they draw money from the citizen and give no direct equivalent in return, unless in the employment, in common with the rest of the citizens, of the benefit of good government.

U. S. *vs.* James, 13 Blatch., 208.

The act of February 28, 1903, from the recitals in its enacting clause and the fact that it has received the approval of the President and has been regularly enrolled among the statutes of the United States, must be presumed to have been passed by Congress in strict accord with the letter and spirit of the Constitution, and resort cannot be had to the journals of the two houses to overthrow this presumption.

Field *vs.* Clark, 143 U. S., 649, 680.
Harwood *vs.* Wentworth, 162 U. S., 547, 562.
Twin City Bank *vs.* Nebeker, *supra.*

Nor is there anything in the case of *Wilkes County vs. Coler*, 180 U. S., 524, relied upon by the appellant, which in any way restricts the rule laid down by the Supreme Court in *Field vs. Clark.* The court in that case was construing a provision of the constitution of North Carolina requiring all acts of the legislature providing for the issuance of bonds to be read three times and so noted upon the legislative journals. Another provision of this constitution required those

journals to be published annually, so that all persons would be in a position to ascertain for themselves that the legislature had complied with the constitutional requirements. In that case the court held that under these special and peculiar provisions of the North Carolina constitution resort could be had to the legislative journals to see whether or not the laws had been properly enacted. The court, however, is careful to distinguish that case from the case of *Field vs. Clark*, and to reaffirm the latter.

The acts of Congress which are attacked in this proceeding by the appellant, we respectfully submit, constitute a contract between the United States and the District of Columbia, upon the one hand, and the railroad companies, upon the other. These companies, relying upon the promise of the other contracting parties, have made contracts obligating themselves to pay out millions of dollars, and have already expended, in the performance of the work required by these statutes and in the acquisition of valuable property and rights, vast sums of money.

Should this legislation which has received the careful and mature consideration of the business men of this District, the Commissioners and the committees of Congress, be declared unconstitutional, these contractual obligations would be impaired, if not wholly destroyed, and the railroad companies would suffer irreparable loss. Nor would the companies be the only sufferers. The United States would be prevented from using the valuable tract of land in the heart of the city constituting a part of the "Mall," and the residents of the District of Columbia would be deprived of a union station of an ornamental and monumental character, which they have been endeavoring to obtain for years, and would be denied the protection to life and limb which would follow the abolition of grade crossings.

Where the consequences that would result from the destruction of statutes solemnly enacted are so grave, we think the court would be entirely justified in refusing to declare

the acts unconstitutional even where defects in the laws or irregularities in their enactment were clearly pointed out. As was said by the Supreme Court of the United States in *Nicol vs. Ames* (173 U. S., 514):

"It is always an exceedingly grave and delicate duty to decide upon the constitutionality of an act of Congress of the United States. The presumption, as has frequently been said, is in favor of the validity of the act, and it is only when the question is free from any reasonable doubt that the court should hold an act of the law-making power of the nation to be in violation of that fundamental instrument upon which all the powers of the Government rest."

Upon the whole case it is respectfully submitted that the court below was right in dismissing the complainant's bill, and that the decree appealed from should be affirmed.

GEORGE E. HAMILTON,
MICHAEL J. COLBERT,
*Attorneys for the Baltimore and Ohio Railroad Company and the Washington Terminal Company.*

WAYNE MACVEAGH,
FREDERIC D. MCKENNEY,
J. S. FLANNERY,
*Attorneys for the Philadelphia, Baltimore and Washington Railroad Company.*

MORGAN H. BEACH,
*U. S. District Attorney, for the Treasurer of the United States,*
ANDREW B. DUVALL,
*For the Commissioners of the District of Columbia,*
*Of Counsel.*